F. & D. No. 1032.
I. S. No. 31153-a. Issued June 16, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 877, FOOD AND DRUGS ACT.

ADULTERATION OF TURPENTINE.

On or about May 8, June 22, and July 1, 1908, Lorick & Lowrance, Columbia, S. C., shipped from the State of South Carolina into the State of Virginia three barrels of a product invoiced and sold as spirits of turpentine. Samples of this product were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and mineral oil was found to be present. As the findings of the analyst and report made indicated that the product was adulterated within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded Lorick & Lowrance and the parties from whom the samples were procured opportunities for hearings. As it appeared after hearings held that the said shipments were made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Eastern District of South Carolina against the said Lorick & Lowrance, Incorporated, charging the shipments above referred to and alleging the product so shipped to be adulterated in that it was sold as and for pure spirits of turpentine, when in truth and in fact it was adulterated because it contained 3.2 per cent of mineral oil.

The cause coming on for hearing, the defendant entered a plea of not guilty to the above information, and trial being had to a jury of the issues involved, and testimony of the witnesses and arguments of counsel having been heard, the court, being fully informed in the premises, charged the jury as follows:

JUDGE'S CHARGE.

Mr. FOREMAN AND GENTLEMEN:

The Court is requested by the learned Counsel for the Defendant to give you certain instructions:

1. The Information being for the violation of the Act by the shipment of turpentine alleged to have been adulterated by the addition of mineral oil, if the jury believe

from the evidence that turpentine is a commodity the bulk of which is used for mechanical purposes and only a small percentage is used as a drug, the Jury cannot convict, unless it has been shown by the evidence—beyond a reasonable doubt—that the Defendant knew that the shipment in question was intended for use as a drug.

COURT: I cannot give you that instruction. I am doubtful whether it is a correct statement of the law. Without passing upon that, where a case might arise in which that instruction might be pertinent and important, the Court is of opinion that in this case there is sufficient evidence to go to the Jury that the Defendants were advised that this particular turpentine was to be used as a drug, because the paper which I hold in my hand is the first letter which was addressed by the Hite Company, Roanoke, Va., to the Defendant Company, and that has in broad, plain letters at the top of it, these words: "Dr. S. P. Hite Company, Inc., Manufacturers of Hite's Pain Cure and Other Remedies, also Flavoring Extracts, Staple Drugs, etc.," and in the corner there is a bottle, "Hite's Pain Cure, the Greatest Internal and External Remedy," and the letter is as follows: "Please quote us your bottom price on pure spirits turpentine in 5 gallon, ½ and one barrel lots." That is sufficient advice to this Defendant Company that this particular shipment of turpentine was to be used as a drug.

2. The Information in this case alleging three different shipments of adulterated turpentine, and the evidence tending to show only one instance of adulteration, the Jury cannot convict, unless the evidence connects—beyond a reasonable doubt—the turpentine analyzed with some one particular shipment.

COURT: I cannot give you that instruction; it would be misleading. The testimony of the Manager of the Hite Company was that this turpentine was obtained from Lorick and Lowrance, that there were three shipments, one in May, one in June, and one in July; he was uncertain as to which package this particular turpentine which was sent to the Williamson Grocery Company was taken from. It was taken from one of the three. Now, if the case were otherwise made out, it is uncertain which package this turpentine was taken from, if you are satisfied beyond a reasonable doubt that it was taken from any one, you will consider the testimony as to which one of the packages was most likely to be the one that this turpentine came from. If you believe that it came from any one of the three it will be sufficient, and you will find your verdict, guilty or not guilty, as the case may be, on whichever Count you think it most likely that this package, which is most likely from the testimony that this turpentine came from.

3. The Jury cannot convict in this case unless the evidence has shown beyond a reasonable doubt that the turpentine alleged to have been analyzed was from some one of the barrels alleged to have been shipped by the Defendant.

COURT: The Court gives you that instruction, that is you must be satisfied beyond a reasonable doubt that the turpentine alleged to have been adulterated came from one or the other of those three shipments by Lorick and Lowrance.

The testimony shows that Hite and Company ordered three times, and that three separate shipments were made, and that out of the three, possibly the three commingled, that certain packages were made up in small bottles, such as have been produced in testimony, and sent to the Williamson Company, West Virginia, some time early in the year following the shipment; that the Government Inspector bought from Williamson and Company several of these boxes filled with these small bottles of turpentine, and upon analysis it was found that the turpentine was adulterated, that it was not pure; that there was three to three and two-tenths per cent of mineral oil in it. If you believe that testimony, then the only question left for you is whether or not the turpentine was adulterated when it was shipped by the Defendants. On the part of the Defendants it has been testified that this turpentine was bought from distillers in the adjoining Counties; they are uncertain as to the particular parties from whom this particular turpentine was bought; that the practice of that Company

was that when turpentine was received to subject to it certain examinations, and they have produced here the instrument by which they examined it, a hydrometer, that demonstrated, for all their purposes, that it was pure turpentine. On the part of the Government, it is contended that the hydrometer that Defendants employed was not such as would enable Lorick and Lowrance to ascertain whether or not there was mineral oil in the turpentine, that that is not a process which would demonstrate the presence or not of mineral oil. You have heard that testimony, you have to determine from it whether or not that contention is true or not. If you believe, and you must believe from the testimony, that the turpentine was adulterated, then you must determine whether or not it was adulterated before it was shipped, whether by Lorick and Lowrance, or by the parties from whom they purshased. If it was adulterated after it passed from their possession, whether in transit on the railroad, or whether it was adulterated by Hite and Company, or by Williamson and Company, after it was received by them, then you cannot hold Lorick and Lowrance responsible. You must be satisfied beyond a reasonable doubt that it was adulterated before it was shipped. It is the shipping of the adulterated drugs which gives this Court cognizance of the offence. If you have reasonable doubt about it you must give the Defendants the benefit of the doubt.

After due deliberation the jury returned a verdict of guilty, whereupon the court entered judgment and imposed a fine of $50.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *May 13, 1911.*

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